

1 IN THE UNITED STATES DISTRICT COURT

2 DISTRICT OF UTAH

3 CENTRAL DIVISION

4  
5 UNITED STATES OF AMERICA, )

6 Plaintiff, )

7 vs. ) Case No. 2:16-CR-631DAK

8 AARON MICHAEL SHAMO, )

9 Defendant. )

10 \_\_\_\_\_)

11  
12  
13 BEFORE THE HONORABLE DALE A. KIMBALL

14 -----

15 May 29, 2019

16  
17 Motion Hearing

18  
19 Partial Transcript

20

21

22

23

24

25

EXHIBIT 1

A P P E A R A N C E S

For Plaintiff:

S. MICHAEL GADD  
348 East South Temple  
Salt Lake City, Utah

VERNON G. STEJSKAL  
111 South Main Street  
Suite 1800  
Salt Lake City, Utah

KENT A. BURGGRAAF  
348 East South Temple  
Salt Lake City, Utah

For Defendant:

GREGORY G. SKORDAS  
KATYLIN V. BECKETT  
560 South 300 East  
Suite 225  
Salt Lake City, Utah

DARYL P. SAM  
5955 South Redwood Road  
Suite 102  
Salt Lake City, Utah

Court Reporter:

Ed Young  
351 South West Temple  
Room 3.302  
Salt Lake City, Utah 84101-2180  
801-328-3202  
ed\_young@utd.uscourts.gov

May 29, 2019

9:00 a.m.

P R O C E E D I N G S

THE COURT: We're here this morning in the matter of United States of America vs. Aaron Shamo, 2:16-CR-631. The United States is represented by Mr. Michael Gadd, Mr. Vernon Stejskal and Mr. Kent Burggraaf.

Correct?

MR. GADD: Correct, Your Honor.

THE COURT: The defendant is present and represented by his counsel, Mr. Greg Skordas, Mr. Daryl Sam and Ms. Kaytlin Beckett.

MR. SKORDAS: That is correct, Your Honor.

THE COURT: All right. I have a briefed motion on the request for a continuance by the defendant. Does one of you want to talk about that?

MS. BECKETT: Your Honor, at this point in time we would still like to file a reply brief on that. I believe the government just filed their responsive brief yesterday, and we had talked with Mr. Gadd about having Eric Wheeler here when that motion is argued so that he can give some context to that.

THE COURT: About what?

MR. SKORDAS: Mr. Wheeler -- Eric Wheeler, he would like to be here for that hearing. He can give some

1 context to the issue of the forensic review and how long it  
2 is actually going to take to process that data, because the  
3 information that has currently been provided is not  
4 accurate, and we would request we be able to argue that on  
5 Friday. I believe we still have hearing time that should be  
6 available on Friday if that is possible, Your Honor.

7 THE COURT: Will he be here Friday?

8 MS. BECKETT: Yes, he can be here Friday.

9 THE COURT: All right. So you want that heard  
10 Friday?

11 MS. BECKETT: That would be preferable, yes, Your  
12 Honor.

13 THE COURT: That is okay with me.

14 Is that okay with you?

15 MR. GADD: Yes, Your Honor.

16 THE COURT: So Friday we'll argue that and hear  
17 testimony from Mr. Wheeler.

18 MS. BECKETT: Correct, Your Honor.

19 THE COURT: All right. What do you want to take  
20 up next?

21 MR. GADD: We're ready to lay foundation for the  
22 contested exhibits if the Court is willing to hear that.

23 THE COURT: What about the motions in limine that  
24 are outstanding?

25 MR. GADD: I'm ready to argue on all of them.

1 THE COURT: Do you care about the order?

2 MR. SKORDAS: No, Your Honor.

3 THE COURT: We talked at the last hearing about  
4 the government's motion regarding sentence, the sentences or  
5 possible sentences.

6 Do you want to say anything else about that?

7 MR. GADD: No, sir.

8 MS. BECKETT: No, Your Honor.

9 THE COURT: Ms. Beckett?

10 MS. BECKETT: No.

11 THE COURT: All right. I will tell you how I feel  
12 about that. I think the government's chart on page 7 of its  
13 reply brief is correct. That is what I will permit and/or  
14 prohibit.

15 Do you see the chart?

16 MS. BECKETT: I don't know if I have that in front  
17 of me, Your Honor. I apologize.

18 THE COURT: I can't hear you.

19 MS. BECKETT: I don't know that I have that in  
20 front of me, Your Honor. I apologize.

21 THE COURT: Now, with respect to the government's  
22 motion to strike the expert, Kelly Shafto, the current  
23 situation is not satisfactory, but is he going to -- he or  
24 she?

25 MR. SKORDAS: She.

1 THE COURT: Is she going to provide a report?

2 MS. BECKETT: Your Honor, I believe it is her  
3 intention to do so. I have not received that report from  
4 her, but essentially what she has been charged with and what  
5 she has been doing in this case involves interviewing the  
6 witnesses and, more specifically, involving the death  
7 resulting count and some of the information that has come to  
8 our attention, and I believe she does intend to provide a  
9 report on that.

10 THE COURT: Well, can you get the government a  
11 report at least by, say, a week from now?

12 MS. BECKETT: Yes, Your Honor. That is not a  
13 problem.

14 THE COURT: And then do we need to have a further  
15 hearing or you can consult with them if you have some issues  
16 with the report?

17 MR. GADD: If we could plan on that -- we'll  
18 consult with them, and we will look at the report and  
19 consult with them, and I think worst case scenario, we may  
20 ask the Court for a Daubert hearing on one of the afternoons  
21 of trial.

22 THE COURT: All right.

23 MR. GADD: Thank you.

24 THE COURT: Motion to strike Dr. Terry Haddix.  
25 Again, we need a report.

1 MS. BECKETT: Your Honor, at this time I don't  
2 think we're going to be calling Dr. Haddix as a witness. It  
3 is my understanding that we will not be calling her.

4 THE COURT: I guess that takes care of that motion  
5 then.

6 MS. BECKETT: Yes, Your Honor.

7 THE COURT: Motion to strike Eric Wheeler. He is  
8 going to be testifying in a couple of days; is that right?

9 MS. BECKETT: I apologize, Your Honor. What was  
10 that?

11 THE COURT: Eric Wheeler is going to be here  
12 testifying Friday?

13 MS. BECKETT: Correct.

14 THE COURT: Do we need a Daubert hearing with him?  
15 There is no indication in what has been disclosed so far  
16 about his experience with the dark web for instance.

17 MR. GADD: I would like a hearing. What I worry  
18 about is the one-week delay in his processing Luke Paz's  
19 computer may make it so he is not fully able to testify at  
20 Friday's hearing.

21 On the other hand, nothing between now and then  
22 will change his relationship and his expertise on things on  
23 the dark net, and so if we could perhaps use his Friday  
24 testimony as a Daubert hearing and then come back to it if,  
25 for example, he comes up with some novel or untested theory

1 as it relates to computer forensics and Mr. Paz's computer,  
2 that would be our request.

3 MR. SKORDAS: That is fine.

4 THE COURT: That makes sense, doesn't it? You're  
5 okay with that?

6 MR. SKORDAS: Yes.

7 THE COURT: All right. Do we start with that on  
8 Friday, first thing, at 9:00?

9 MR. SKORDAS: I think that we should be done with  
10 the other parts of your presentation by Friday so we  
11 probably can start right away.

12 MR. GADD: Worst case scenario, we have one  
13 witness who is serving a search warrant in Las Vegas who was  
14 planning to be back for Friday morning, but I have a feeling  
15 that his exhibits may be admitted today and we won't need  
16 him Friday.

17 THE COURT: Okay. Let's see. Defendant's motions  
18 regarding the dark web, P.G.P., sigaint e-mail, dark net  
19 marketplace, AlphaBay, et cetera, what do you want to say  
20 about that?

21 MR. SAM: Your Honor, with the information that we  
22 have been getting in and the hard drive that came in  
23 yesterday, we would like by the end of next week to respond  
24 to that.

25 THE COURT: To renew or respond to that motion?

1 All right. But it is your motion. Do you mean bolster it?

2 MR. SAM: Yes, to supplement what we have filed.

3 THE COURT: Mr. Gadd?

4 MR. GADD: I just wanted to make sure we are all  
5 on the same page. The Court's referring to the motion filed  
6 as document 171 on December --

7 THE COURT: I am.

8 MR. GADD: -- 1st, so six and a half months ago  
9 roughly?

10 MR. SAM: I'm sorry. I'm getting mixed up. The  
11 exhibit -- the motion for the extension on exhibits, we did  
12 provide the government the exhibits last Friday. Maybe I  
13 am --

14 THE COURT: You two better talk for a minute.

15 MR. SAM: Your Honor, if we could reserve that  
16 until Friday --

17 THE COURT: Friday?

18 MR. SAM: Yes, if there is any oral argument to be  
19 made on that.

20 THE COURT: I think preliminarily it looks to me  
21 as though, assuming the government can authenticate the  
22 documents through their agents, which it appears they would  
23 do, then that motion would be denied.

24 MR. SAM: That would be my understanding too, Your  
25 Honor, if there is something that can't be authenticated --

1 THE COURT: All right. Let's see. You're  
2 objecting to Guy Gino's testimony?

3 MR. GADD: That was part of the same motion, that  
4 document 171. It is partway --

5 THE COURT: That is the second part.

6 MR. GADD: Yes, sir.

7 THE COURT: I guess right now I don't see why he  
8 can't do what the government proposes that he do and testify  
9 to, so I'm denying that motion preliminarily. I will listen  
10 to more argument if you want to.

11 MR. SAM: Your Honor, that would be acceptable to  
12 us at this point. If there is anything with authentication  
13 that we object to, we'll raise it.

14 THE COURT: Thank you.

15 Motion to exclude ecurrency dollar amounts. I  
16 don't see any reason to do that except that I don't know  
17 what the auction value would have to do with anything. That  
18 is not relevant, is it?

19 MR. GADD: The defense has suggested in their  
20 reply that perhaps we should be limited to the value on the  
21 date of the seizure, the value on the date of acquisition  
22 or -- I think it was just those two. Or the value on the  
23 date of his arrest. I think those were the three that they  
24 were interested in. As we looked at it, we thought that is  
25 fair and we're happy to limit ourselves to that.

1 THE COURT: All right. That makes sense to me.  
2 You get a partial grant and a partial denial on that.

3 MR. GADD: I will say, so they are not caught off  
4 guard, that the value on the date of the seizure is also  
5 substantially high. Bitcoin, as you can see from our  
6 response, Bitcoin was trending up when we seized it and was  
7 on its way back down when we sold it and is still going to  
8 be quite high. I think we can ameliorate all of these  
9 concerns by just explaining to the jury that exchange rates  
10 fluctuate and they shouldn't hold it against Mr. Shamo that  
11 he happened to make a very good illicit investment.

12 THE COURT: Now, did you just say something  
13 different than what you had previously agreed to in your  
14 prior statement?

15 MR. GADD: No. The agreement stays. I don't want  
16 to catch them off guard when they hear the number or the  
17 value on the date that it was seized because it will also be  
18 high. I didn't look it up last night, but it will be high.

19 THE COURT: You have agreed on the three dates.  
20 Ms. Beckett?

21 MS. BECKETT: Yes, Your Honor.

22 I would just like to clarify. I think our request  
23 in our motion also included that we would like substantial  
24 information on how they are establishing the amounts that  
25 they are referencing, whether that be the historical data or

1 somebody who can actually talk about the historical data  
2 itself in terms of the exchange rates for Bitcoin. So if  
3 they are going to talk about the actual amount at the time  
4 it was seized, we would like to have somebody on the stand  
5 who can actually talk about the historical amount and what  
6 the exchange rate was at that point in time. That would be  
7 our request. Or if they want to do it at the point in time  
8 of the transaction, we would need that information still.

9 MR. GADD: We'll lay that foundation testimony  
10 through our expert, Guy Gino.

11 THE COURT: Now, when you were here before I think  
12 we talked about the people who are now not available to  
13 testify because they are not alive and that you are not  
14 claiming that the defendant has any responsibility for,  
15 correct?

16 MR. GADD: Yes.

17 THE COURT: We'll give a limiting instruction on  
18 that, so that it is clear that he is not being charged with  
19 those deaths.

20 MS. BECKETT: Your Honor, on that I believe we  
21 also agreed we would not refer to those as overdose deaths,  
22 just simply deceased or unavailable to testify or be  
23 interviewed. I believe that was the discussion that  
24 occurred.

25 THE COURT: I think it was.

1 Mr. Gadd?

2 MR. GADD: That is my memory as well.

3 THE COURT: Let's talk about the pictures for a  
4 minute.

5 MS. BECKETT: I think we laid a significant amount  
6 of testimony on this before, but our concern with the photos  
7 that have been proposed, even the narrowed number, is they  
8 are not necessary and they are fairly gruesome and I believe  
9 those were provided to the Court.

10 THE COURT: Yes.

11 MS. BECKETT: Our concern is that showing those  
12 photos when there is not a necessity for the information  
13 that they contain is unnecessary and, as we outlined, very  
14 much unduly prejudicial.

15 THE COURT: Thank you.

16 MR. GADD: As I think about the attorneys on the  
17 case, I am going to guess most of us have had cases with  
18 photos far worse. That has certainly been my experience. I  
19 suspect that is Mr. Skordas's experience. These just are  
20 not that bad.

21 We have narrowed it down to three. They have  
22 significant, important, probative value to our case, and  
23 specifically to a very difficult aspect of our case and that  
24 is proving but for causation of death. These photos were  
25 relied on specifically by our expert, Dr. Hail. Not only

1 did she rely on them, she even included the close-up picture  
2 in her report. This is some of our very best evidence that  
3 Fentanyl was the but for cause of death.

4 Her role is educational. She is going to try to  
5 teach the jurors in the limited time she has on the stand  
6 that you can tell, through a combination of physiological  
7 effects and an autopsy and through years and years of  
8 training and experience and education and studying it, what  
9 drugs killed someone. The physiological effects are  
10 apparent in the photos. I don't see a way for us to prove  
11 it without the photos. We have tried to limit it to just  
12 these three.

13 THE COURT: Well, she could describe it, couldn't  
14 she?

15 MR. GADD: It is just not the same. You know, I  
16 think colloquially --

17 THE COURT: Colloquially.

18 MR. GADD: -- we say a picture is worth one  
19 thousand words and certainly that is the case here. We have  
20 cited a number of examples where courts allowed pictures far  
21 worse than these in order to help a forensic expert explain  
22 the nature and the cause of death.

23 THE COURT: Ms. Beckett?

24 MS. BECKETT: Your Honor, I think there are two  
25 issues that we're looking at. First, we have already

1     conceded that we are not bringing in another expert who is  
2     going to argue the issue of whether or not it was a Fentanyl  
3     overdose. That I think negates part of the government's  
4     argument.

5             The other side of that is that Ms. Hail, the  
6     expert who is referring to these photos, she didn't conduct  
7     any examination of the victim in the case. She reviewed  
8     reports. She can discuss those reports. She can discuss  
9     those reports the same way she can discuss those photos  
10    without giving those to the jury.

11            The flip side of that, Your Honor, is that there  
12    are causational elements you have to look at for a death  
13    resulting count and the government is ignoring the other  
14    side of that. Without going too far down the road of what  
15    evidence we will be bringing forward in that regard,  
16    essentially what they are guaranteeing by showing these  
17    types of photos to the jury is nullifying the other side of  
18    that argument by seeing a young man who is deceased, an up  
19    close photo of a deceased individual's face in two separate  
20    shots, and then his body on the floor next to a bed after it  
21    has been moved. I don't see how those have any other impact  
22    than unduly prejudicial. I don't think they are necessary  
23    and I think Your Honor is correct in pointing out that Ms.  
24    Hail can simply say what she saw and what she reviewed  
25    without showing that to the jury.

1 THE COURT: One of the photos I would call a  
2 proximity photo and I don't have any problem with that.  
3 Preliminarily, I'm inclined only to let that one in, but I  
4 will keep thinking about that.

5 What do you want to do next?

6 The proximity photo sort of sets the room up. I  
7 don't think it is unduly prejudicial.

8 MR. GADD: Is that the photo that just shows the  
9 lower half of his body?

10 The defendants provided the United States with its  
11 exhibit list and we appreciate them doing that. To the  
12 extent that the United States has some specific objections  
13 to the exhibits related to foundation, how would the Court  
14 like us to proceed? Should we file those? Should we  
15 address it at this hearing? What is the best path forward?

16 THE COURT: Well, we can address it now if you  
17 want. It might make more sense to file your objections,  
18 though.

19 MR. GADD: I will do that. I think it would help  
20 to see the foundation. I hate to object saying, well, there  
21 is no foundation when they have not had a chance to put any  
22 on, but I think there are significant foundation objections,  
23 and so I would like to go through those. I'm happy to put  
24 it in writing and maybe that is the best path forward.

25 THE COURT: It may be, but if you want to proceed,

1 I will let you.

2 MR. GADD: I will do it in writing. That makes  
3 more sense.

4 THE COURT: All right.

5 MR. GADD: On this green sheet of paper I have  
6 what has been the standing plea offer from the United  
7 States. I don't want to get into it much, but after a pair  
8 of Supreme Court cases a couple years ago, Lefler and Frye,  
9 it became incumbent on the government shortly before trial  
10 to just quickly put on the record a few things.

11 Mr. Shamo now has a chance to look at that and it  
12 will show his case number, today's date, and then the very  
13 short prior offer and it is just three lines. I wonder if  
14 the Court would be willing to just inquire briefly and  
15 ensure that he has received the offer, that he had a chance  
16 to consider it and ask any questions that he wanted to his  
17 attorney, and that he has a reason, in his mind a good  
18 reason to reject the offer, and then with those three things  
19 covered, the only thing I would add is that the offer will  
20 expire at the end of the day today.

21 THE COURT: Do you have any objection?

22 MS. BECKETT: I would like to briefly make a  
23 record in that regard, Your Honor.

24 THE COURT: All right.

25 MS. BECKETT: There has been conversation back and

1     forth between our office and the U.S. Attorney's Office  
2     regarding this particular offer, and we actually  
3     counteroffered them at a certain point with a range that was  
4     different than this. The range I believe that we suggested  
5     was between 28 -- down to 28 or 25 years and they are still  
6     allowed to argue up to life in prison which, in our opinion,  
7     is commensurate with some of the other coconspirators who  
8     are on the same level of culpability or that the government  
9     has alleged are on the same level of culpability as  
10    Mr. Shamo.

11           MR. GADD: I don't mean to interrupt other than to  
12    say my preference would be that we not go into the details  
13    and the specifics of the offer consistent with Rule 410, but  
14    just for Mr. Shamo to say that he has received the offer, he  
15    has had a chance to consider it and ask any questions that  
16    he would like to to his attorneys and that in his mind he  
17    has a good reason to reject the offer. That is all.

18           MS. BECKETT: I see no reason to not make a record  
19    of that, Your Honor. There is specific information that  
20    has been brought before this Court right now. We are making  
21    a record in that regard, but we are not objecting to an  
22    inquiry as to whether or not Mr. Shamo has had an  
23    opportunity to question his counsel and inquire about this.

24           MR. SKORDAS: Mr. Shamo, you received the offer?

25           MR. SHAMO: Yes. I just received the offer.

1 THE COURT: And do you understand it?

2 MR. SHAMO: Yes, I understand it.

3 THE COURT: All right. Have you had a chance to  
4 question your lawyers about it?

5 MR. SHAMO: I'm sorry?

6 THE COURT: Have you had an opportunity to  
7 question your lawyers about it, to talk to them about it?

8 MR. SHAMO: Yes, I have.

9 THE COURT: In your mind, and you don't need to  
10 tell me any reasons, but in your mind at least to this point  
11 you feel like you have sound reasons for not accepting it?

12 MR. SHAMO: Yes.

13 THE COURT: Thank you.

14 MR. GADD: Thank you, Your Honor.

15 I notice the defendant said that he had just  
16 received the offer. I thought we might want to clarify just  
17 for the record that he received this green sheet of paper  
18 that we'll put into our case file and hopefully never have  
19 to use again, but the offer was made approximately six  
20 months ago and I believe that is when he first received the  
21 offer. I just wanted to clarify.

22 THE COURT: Is that essentially correct, you  
23 received it before today?

24 MR. SHAMO: Yeah. It is one that was discussed.

25 THE COURT: Okay. Thank you.

1 MR. GADD: Other than calling witnesses and laying  
2 foundation for exhibits, I don't have anything else to  
3 address.

4 Thank you.

5 THE COURT: What about you, Mr. Skordas?

6 MR. SKORDAS: No, Your Honor.

7 THE COURT: Well, let's call them then.

8 (Proceedings continue.)  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25